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JUL 08 2009

OFFICE OF PETITIONS

In re Application of :  
Michael W. Marcellin et al :  
Application No. 10/534,620 :  
Filed: May 11, 2005 :  
Attorney Docket No. 122170.00002US :

ON PETITION

This is a decision on the petition under 37 CFR 1.313(a), filed July 6, 2009, to withdraw the above-identified application from issue.

The petition is **DISMISSED**.

Petitioner requests that the present application be withdrawn from issue for consideration of an IDS filed on July 6, 2009.

37 CFR 1.313(a) states, in part:

Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

As such, a grantable petition requesting withdrawal of an application from issue must be accompanied by: (1) a showing of good and sufficient reasons why withdrawal of the application from issue is necessary; and (2) the requisite petition fee under 37 CFR 1.17(h). The petition fee of \$130.00 has been charged to petitioner's deposit account.

However, the petition does not set forth good and sufficient reasons as to why withdrawal of the application from issue is necessary. The mere submission of an IDS with the petition does not make withdrawal of the application from issue necessary. There are other avenues open to applicant to have an IDS considered other than by way of petition.

Following the part of 37 CFR 1.313(a) cited above, 37 CFR 1.313(a) goes on to state:

A petition under this section is not required if a request for continued examination under § 1.114 is filed prior to payment of the issue fee.

The filing of a request for continued examination (RCE) under 37 CFR 1.114 with a submission and the fee set forth in 37 CFR 1.17(e) would have been a proper available option to have the IDS considered. It is well documented that an IDS satisfies the submission requirement under 37 CFR 1.114. *See MPEP 706.07(h)(II).*

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/Karen Creasy/  
Karen Creasy  
Petitions Examiner  
Office of Petitions